

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7319 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO
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JYOTI SOAP FACTORY

Versus

STATE TRADING CORPORATION OF INDIA LTD.

Appearance:

1. Special Civil Application No. 7319 of 1988
MR RJ OZA for Petitioner No. 1
MR PM RAVAL for Respondent No. 1
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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 25/09/2001

ORAL JUDGEMENT

1. The petitioner, in this petition under Article 226 of the Constitution of India, has challenged the action of the respondent authorities in compelling the petitioner to lift the goods i.e. 264.280 MT Inedible Oil Mixed Sludge lying at ACC New Kandla, after expiry of the

validity period of tender and forfeiting the earnest money deposit for non lifting of goods by the petitioner firm. The petitioner has made a prayer to make refund of Rs. 1.30 lacs deposited by the petitioner towards earnest money deposit along with form of offer dated 19.5.1988, with interest at the rate of 24% p.a.

2. The petitioner is dealing in manufacturing and trading of soap in the State of Gujarat and is utilising acid oil or sludge in the process of manufacturing soap along with other raw materials. The respondent Corporation, by issuing public advertisement in the local newspaper, invited tenders for sale of Inedible Oil weighing approximately 264.280 MT and lying at ACC New Kandla. The petitioner obtained form along with terms and conditions for sale of inedible Oil Mixed Sludge from the respondent Corporation. Clause 4 of the terms and conditions of tender form is relevant which is reproduced as under:

"4. The tenderer will have to quote the rate on per metric tonne basis (gross weigh including weight of drums/ tins) for quantity and net for bulk oil on ex tank basis. Tenderers will have to quote for entire lot and no offer for part quantity will be entertained. The offers should be accompanied by Earnest Money Deposit (EMD) of five per cent of the value of goods on the basis of rate offered by the tenderer or Rs. 5000/(Rs. Five thousand) whichever is higher. The Earnest Money Deposit (EMD) should be paid by Bank Demand Draft or Bank Pay Order favouring the State Trading Corporation of India Ltd. and payable at Gandhidham. No interest will be paid on the amount of EMD. The offers should be valid for acceptance till 20.6.1988. In the event of any neglect, default or failure on the part of the tenderer in complying with the terms and conditions of this sale, the Earnest Money shall without any notice to the tenderer stands forfeited. The Earnest Money Deposit will be refunded to the successful tenderer only after completion of lifting of the allotted quantity in full and after adjustment of dues, if any. "

According to the petitioner, he was required to make payment of EMD of 5% of the value of the goods on the basis of rate offered by him as the said amount was higher than the specified amount of EMD of Rs. 5000/-. It is further stated by the petitioner that the offer which was being submitted by the offerer in pursuance to the tenders invited by the respondent Corporation would

be valid for acceptance till 20.6.1988. The petitioner submitted tender form on 19.5.1988 within the stipulated period along with bank draft of Rs. 1.30 lacs towards 5% value of goods at the rate quoted by him for all the three lots, namely lot no. 1,2 and 4 only. It appears that the respondent Corporation considered all the bids and decided to accept the tender form of the petitioner in respect of lot no. ACC-1 of 264.28 MT in bulk at the rate of 6750/- per MT. In pursuant to the telegram, the petitioner approached the respondent Corporation on 25.6.1988 with a draft of Rs. 5 lacs being the value of goods offered to the petitioner. It appears that the respondent Corporation refused to accept the said draft on the ground that M/s Dinesh Soap Factory has filed a writ petition in this Court and obtained stay order and, therefore, they were unable to accept the above amount of value of goods from the petitioner firm. It appears that this Court, on 27.6.1988, granted ad-interim relief whereby the respondent Corporation was restrained from selling and/ or delivering 264.280 MT or any part thereof of Inedible Mixed Oil Sludge of Lot No. ACC-1 lying at ACC, New Kandla to petitioner. It appears that on 27.8.1988, M/s Dinesh Soap Factory withdrew the petition unconditionally.

3. It is the case of the petitioner that by lapse of time, there being heavy fluctuations in the prices of Sludge and acid oil, it became impossible for the petitioner to lift the goods as per the offer submitted by the petitioner firm. This is also in view of the fact that the validity of the acceptance of offer expired on 28.6.1988 and consequently on 4.7.1988, as per telegram issued by the respondent Corporation, there was no obligation on the part of the petitioner firm to lift the goods. It is submitted by the petitioner that the respondent Corporation could have returned earnest money deposit to the petitioner firm. It is the case of the petitioner that even though they have contacted Kandla Office of the respondent Corporation and requested to refund the amount of EMD to the petitioner, they did not pay any heed. On the contrary, the petitioner was served with a telegram dated 30.9.1988 inter alia stating that as per the advice given by the Marketing Manager of the respondent Corporation to the petitioner, the petitioner should lift Sludge as per the original order within seven days. It is, however, the case of the petitioner that in view of heavy fall in prices of Sludge as well as acid oil, it became impossible for the petitioner to lift the goods as per the offer submitted by the petitioner firm. Therefore, the Corporation cannot compel the petitioner to lift the goods.

4. There is no dispute to the fact that the petitioner has not lifted Sludge though asked by the respondent Corporation and, therefore, the respondent has forfeited EMD aggregating Rs.1.30 lacs for items no. 1,2 and 4. It appears that by virtue of the interim order dated 30.1.1989 passed by this Court, an amount of Rs. 40,806.50 being the amount of EMD for items no. 1 and 4 has been returned to the petitioner in view of the fact that the order was not given by the respondent Corporation to the petitioner. Therefore, the only question that arises for my consideration is whether the petitioner is entitled to claim refund of Rs. 89,194.50 being the EMD for item no.2.

5. An affidavit-in-reply has been filed by the Chief Marketing Manager of the respondent Corporation. Perusing the said reply, it is clear that the respondent Corporation accepted the offer within validity period and, therefore, the Corporation was entitled to forfeit EMD as per the terms and conditions of contract. As provided in clause 4 of the agreement, the offer was valid for acceptance up to 20.6.1988. As per annexure B which is a telegram sent by the respondent Corporation to the petitioner, the petitioner was clearly informed that the offer was accepted for Lot No. ACC-1 of 264.28 MT in bulk at Rs. 6750/- per MT. The petitioner was requested to remit the total value of lot including sales tax and other levies on or before 4.7.1988. As stated above, the petitioner has not lifted Sludge and, therefore, as per the terms and conditions of contract, the respondent Corporation was entitled to forfeit the amount of EMD for item no.2 of the offer form. In that view of the matter, I see no merit in this petition.

6. In the result, this petition fails and is dismissed. Rule is discharged with no order as to costs.

(K.R.Vyas, J.)

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